

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

The Diocese of Rochester,

Case No.: 19-20905

Chapter 11 Case

Debtor,

**CONTINENTAL INSURANCE COMPANY'S LIMITED JOINDER IN COMMITTEE'S
MOTION TO TAKE RULE 2004 DISCOVERY OF THE BISHOP EMERITUS**

The Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey and Firemen's Insurance Company of Newark, New Jersey ("Continental"), hereby joins in the Motion (the "Motion") of the Official Committee of Unsecured Creditors (the "Committee") to take discovery, pursuant to Federal Rule of Bankruptcy Procedure 2004, of Bishop Emeritus Matthew Harvey Clark (the "Bishop Emeritus") [Dkt. # 380].

ARGUMENT

The Committee's Motion ably explains why, under the circumstances described, it is appropriate to authorize a Rule 2004 examination of the Bishop Emeritus.

The evidence that the Committee may elicit from the Bishop Emeritus certainly bears on the claims against the estate held by alleged victims of sexual abuse. The estate's potential liability for such claims, in turn, is highly relevant to whether, and to what extent, insurance may be available to the estate to satisfy such claims.

In addition, the Bishop Emeritus may also have information that bears on the availability of insurance coverage, including matters that are directly relevant to the adversary proceeding

that the Diocese has filed against Continental and other insurance carriers. *The Diocese of Rochester v. Continental Insurance Company*, Bankr. W.D.N.Y. Adv. Proc. No. 19-02021.

As the Court is aware, Continental is prepared to engage with the Diocese and the Committee regarding a comprehensive global resolution of the various issues presented in this bankruptcy case. It would be inappropriate, however, for one set of parties in those discussions to have access to critical information directly relevant to the underlying disputes, while depriving other parties of access to that same information.

Moreover, to the extent the parties are unable to resolve the insurance issues through mediation, the issues raised in the adversary proceeding would ultimately need to be litigated. Under the circumstances described in the Committee's Motion, it would be appropriate to permit Continental to secure and preserve relevant testimony from the Bishop Emeritus for use in such litigation, should litigation prove necessary.

Continental does not seek to complicate or materially prolong the examination of the Bishop Emeritus. To the extent the Court grants the Committee's Motion, Continental requests that any documents produced by the Bishop Emeritus also be produced to Continental, and that to the extent the Bishop Emeritus is subject to deposition, that Continental be permitted to participate in the deposition and to ask non-duplicative questions of the Bishop Emeritus for a period that shall not exceed two hours.

CONCLUSION

WHEREFORE, Continental respectfully requests that the Court grant the Committee's Motion, and further direct that Continental be permitted to join in any subpoena issued to the Bishop Emeritus for documents and testimony, consistent with the limitations set forth herein.

Dated: February 6, 2020

Respectfully submitted,

BARCLAY DAMON LLP

/s/ Jeffrey A. Dove

By: _____

Jeffrey A. Dove, Esq.
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Telephone: (315) 413-7112
Facsimile: (315) 703-7346
jdove@barclaydamon.com

Craig Goldblatt
Isley Gostin
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 663 6000
Facsimile: (202) 663-6363

David Christian
DAVID CHRISTIAN ATTORNEYS LLC
105 W. Madison St., 14th Floor
Chicago, IL 60602
Telephone: 312-273-1807
dchristian@dca.law

David A. Attisani
J.P. Jaillet
CHOATE HALL & STEWART LLP
Two International Place
Boston, MA 02110
Telephone: (617) 248-5000
Facsimile: (617) 248-4000

Counsel to Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey and Firemen's Insurance Company of Newark, New Jersey